

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REPLY TO GOVERNMENT'S OPPOSITION TO SUPPLEMENTING ATTACHMENT A

The prosecution's reluctance to include the names of mental health experts it has already retained – and who may testify – is perplexing, particularly given its insistence that the defense provide names of mental health experts noticed under Rule 12.2. On motion of the government and over defense objection, which relied on the protections provided by Rule 12.2 and a prior Order of this Court, this Court went beyond the normal protections of Rule 12.2(b)(2) and compelled Mr. Bowers to produce the identity of potential testifying mental health experts.

The government’s claims of not knowing whether a currently retained person **may** be a testifying witness ring hollow. Indeed, identifying an individual on a witness list does not compel the party to call the witness. And contrary to the government’s argument, providing notice under Rule 12.2(b)(2) is not an assertion that an individual expert **will** testify during the penalty phase. *See* ECF 1005, p. 2-3 (“In contrast, the supplement to the defendant’s Rule 12.2 Notice identified various mental health professionals who the defendant has asserted **will** testify during the penalty phase –

which is why such individuals should be included in Attachment A...") Indeed, the defense has only asserted an "intent" to rely on mental health expert testimony during a penalty phase, but will be given an opportunity after any conviction to reaffirm that intent, or to determine not to call such experts to testify.

For the reasons stated, the Court should direct the government to include the names of currently identified potential testifying experts on its witness list so that such names can be included on Attachment A to the Juror Questionnaire.

Respectfully submitted,

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